

PTO/SB/21 (04-04)

Approved for use through 07/31/2008. OMB 0651-0031

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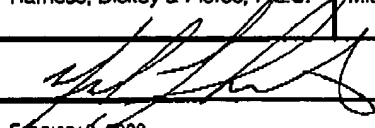
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TRANSMITTAL FORM (to be used for all correspondence after initial filing)		Application Number	10/664,837
		Filing Date	September 17, 2003
		First Named Inventor	James T. Perkins
		Art Unit	3763
		Examiner Name	Thanh, Loan H.
Total Number of Pages in This Submission	8	Attorney Docket Number	P03320 (6639-000051/US)

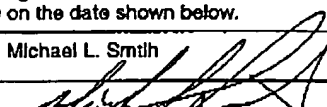
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ENCLOSURES (check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Statement of Facts in Support of Filing on Behalf of a Non-Signing Inventor under 37CFR 1.47 Copy of Cover Letter to Mr. Ferrelra
Remarks: The Commissioner is hereby authorized to charge any additional fees that may be required under 37 CFR 1.16 or 1.17 to Deposit Account No. 08-0750. A duplicate copy of this sheet is enclosed.		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Harness, Dickey & Pierce, P.L.C.	Attorney Name	Michael L. Smith	Reg. No.	35,685
Signature					
Date	February 6, 2006				

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.			
Typed or printed name	Michael L. Smith	Express Mail Label No.	
Signature		Date	February 6, 2006

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	10/664,837	
	Filing Date	September 17, 2003	
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Remarks: The Commissioner is hereby authorized to charge any additional fees that may be required under 37 CFR 1.16 or 1.17 to Deposit Account No. 08-0750. A duplicate copy of this sheet is enclosed.		Duplicate

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm or Individual name	Harness, Dickey & Pierce, P.L.C.	Attorney Name	Michael L. Smith
Reg. No.	35,685		
Signature			
Date	February 6, 2006		

CERTIFICATE OF TRANSMISSION/MAILING			
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Typed or printed name	Michael L. Smith	Express Mail Label No.	
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PTO/SB/17p (11-04)

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PETITION FEE
Under 37 CFR 1.17(f), (g) & (h)
TRANSMITTAL
 (Fees are subject to annual revision)

Send completed form to: Commissioner for Patents
 P.O. Box 1450, Alexandria, VA 22313-1450

Application Number	10/664,837
Filing Date	September 17, 2003
First Named Inventor	James T. Perkins
Art Unit	3763
Examiner Name	Thanh, Loan H.
Attorney Docket Number	P03320 (6639-000051/US)

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Enclosed is a paper filed under 37 CFR 1.47 that requires a processing fee (37 CFR 1.17(f), (g), or (h)). Payment of \$ 200.00 is enclosed/authorized.

This form should be included with the above-mentioned paper and faxed or mailed to the Office using the appropriate Mail Stop, (e.g., Mail Stop Petition), if applicable. For transmittal of petition fees under 37 CFR 1.17(i) see form PTO/SB/17i.

Payment of Fees (small entity amounts are NOT available for the petition fees)

- ☒ The Commissioner is hereby authorized to charge the following fees to Deposit Account No. 08-0750 :
☒ processing fee under 37 CFR 1.17(f), (g) or (h) ☒ any deficiency of fees and credit of any overpayments

Enclose a duplicative copy of this form for fee processing.

☐ Check in the amount of \$ _____ is enclosed.

☐ Payment by credit card (Form PTO-2038 or equivalent enclosed). Do not provide credit card information on this form.

Petition Fees under 37 CFR 1.17(f): Fee \$400 Fee Code 1462

For petitions filed under:

- § 1.63(a) - to accord a filing date.
- § 1.67(a) - to accord a filing date.
- § 1.182 - for decision on a question not specifically provided for.
- § 1.183 - to suspend the rules
- § 1.378(e) - for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.
- § 1.741(b) - to accord a filing date to an application under § 1.740 for extension of a patent term.

Petition Fees under 37 CFR 1.17(g): Fee \$200 Fee Code 1463

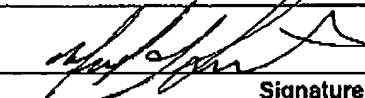
For petitions filed under:

- § 1.12 - for access to an assignment record.
- § 1.14 - for access to an application.
- § 1.47 - for filing by other than all the inventors or a person not the inventor.
- § 1.69 - for expungement of information.
- § 1.103(a) - to suspend action in an application.
- § 1.136(b) - for review of a request for extension of time when the provisions of section 1.136(a) are not available.
- § 1.295 - for review of refusal to publish a statutory invention registration.
- § 1.296 - to withdraw a request for publication of a statutory invention registration filed on or after the date the notice of intent to publish issued.
- § 1.377 - for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.
- § 1.550(c) - for patent owner requests for extension of time in *ex parte* reexamination proceedings.
- § 1.556 - for patent owner requests for extension of time in *inter partes* reexamination proceedings.
- § 5.12 - for expedited handling of a foreign filing license.
- § 5.15 - for changing the scope of a license.
- § 5.25 - for retroactive license.

Petition Fees under 37 CFR 1.17(h): Fee \$130 Fee Code 1464

For petitions filed under:

- § 1.19(g) - to request documents in a form other than that provided in this part.
- § 1.84 - for accepting color drawings or photographs.
- § 1.91 - for entry of a model or exhibit.
- § 1.102(d) - to make an application special.
- § 1.136(c) - to expressly abandon an application to avoid publication.
- § 1.313 - to withdraw an application from issue.
- § 1.314 - to defer issuance of a patent.



Signature

Michael L. Smith

Typed or printed name

February 6, 2006

Date

35,685

Registration No., if applicable

This collection of information is required by 37 CFR 1.17. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 5 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: James T. Perkins	Examiner: Thanh, Loan H.
Serial Number: 10/664,837	Atty Docket No.: P03320 (6639-000051/US)
Filed: September 17, 2003	Art Unit: 3763
For: PHACOEMULSIFICATION NEEDLE	

PETITION UNDER 37 CFR §1.47

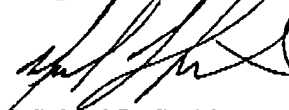
IFW Formal Filings
ATTN: Office of Petitions
Facsimile: (571) 273-8300

Honorable Sir:

This is a renewed Petition for Filing an Application on Behalf of a Non-Signing Inventor. You are hereby authorized to charge fees as set forth in §1.17(g) and any other fees that may be required to Deposit Account No. 08-0750.

The acceptance of the Petition in light of the attached Statement of Facts in support of Filing on Behalf of a Non-Signing Inventor is respectfully requested.

Respectfully submitted,



Michael L. Smith
Reg. No. 35,685

DATE: February 6, 2006

Correspondence Address:
BAUSCH & LOMB INCORPORATED
One Bausch & Lomb Place
Rochester, New York 14604-2701
TEL: (314) 446-7646

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: James T. Perkins	Examiner: Thanh, Loan H.
Serial Number: 10/664,837	Atty Docket No.: P03320 (6639-000051/US)
Filed: September 17, 2003	Art Unit: 3763
For: PHACOEMULSIFICATION NEEDLE	

**STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF A
NON-SIGNING INVENTOR UNDER 37CFR §1.47**

This revised Statement of Facts is submitted in response to the dismissal of the prior Petition filed on 24 March 2004. The present application was filed on 17 September 2003, as application serial number 10/664,837.

One of the named inventors, Paul J. Ferreira, has left the employ of the Assignee to the present invention, and has refused to sign the Declaration and Power of Attorney and the Assignment documents. Mr. Ferreira was sent application papers, including a copy of the above-identified application which contained the description, claims, abstract, and drawings, along with Declaration and Assignment documents on 19 August 2003 and again on 19 November 2003, at his last known address of 15 Idlewood Place, Stamford, Connecticut 06905.

The previously submitted Statement of Facts by the undersigned did not explicitly set forth that a copy of the application was included with the papers sent to Mr. Ferreira. A copy of the cover letter (enclosed) sent along with the papers to Mr. Ferreira on 20 November 2003, clearly shows that a copy of the application which was filed on 17 September 2003, was sent to Mr. Ferreira.

As stated previously, in a conversation on 29 January 2004 with the undersigned, Mr. Ferreira indicated that he would send the documents that had been sent to him back to Bausch & Lomb within the next couple of days. The documents were never received.

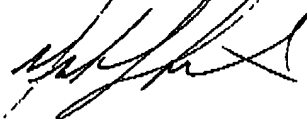
02/07/2006 MBINAS 00000035 000750 10664837
01 FC:1463 200.00 DA

The undersigned again called Mr. Ferreira on 18 February 2004, and left a message on his voicemail. Again on 19 February 2004, the undersigned called Mr. Ferreira who answered the phone and instructed the undersigned not to call him again, and hung up.

As can be seen from the previously submitted Employment Agreement signed by Mr. Ferreira and the facts stated above, inventor Ferreira has refused to sign documents assigning his co-invention to its rightful owner, Bausch & Lomb Incorporated. Therefore, this Statement of Facts is submitted to substitute for Mr. Ferreira's refusal to sign the appropriate documents. This Statement is being made by the undersigned who has first-hand knowledge of the facts recited herein.

As Mr. Ferreira has left the employ of the Assignee, the last known address for Mr. Ferreira is 15 Idlewood Place, Stamford, Connecticut 06905. This address was correct at the time the patent application and other application documents were sent to Mr. Ferreira. As indicated from the Statement of Facts above, Mr. Ferreira had received the packages sent to him. As Mr. Ferreira has left the employ of Bausch & Lomb Incorporated, the undersigned was unable to determine the current accuracy of Mr. Ferreira's address.

Respectfully submitted,



Michael L. Smith
Reg. No. 35,685

DATE: February 6, 2006

Correspondence Address:
BAUSCH & LOMB INCORPORATED
One Bausch & Lomb Place
Rochester, New York 14604-2701
TEL: (314) 446-7646

BAUSCH & LOMB

M E M O R A N D U M

TO: Paul J. Ferreira **Date:** November 20, 2003

FROM: Michael L. Smith **VIA FEDERAL EXPRESS**

RE: U.S. Patent Appln. No.: 10/664,837
Filed: September 17, 2003
PHACOEMULSIFICATION NEEDLE
File No.: P03320

URGENT!!

Enclosed find a copy of the above-identified application which was filed on September 17, 2003. Please keep the copy of the Application for your files.

Also enclosed find three (3) copies of a Declaration and Power of Attorney, three (3) copies of an Assignment, and a copy of 37 CFR 1.56.

Please review each of the copies provided. Upon your review and approval, please sign and date each of the Declarations and Power of Attorney documents in the space provided. Then, please sign and date each Assignment document in the space provided before a Notary and have the same notarized.

After the documents have been signed, dated, and notarized as described, please forward the same to me in the enclosed self-addressed, postage paid Federal Express envelop along with any pertinent art references of which you are aware in accordance with 37 CFR 1.56.

It is imperative that we receive the fully executed documents back by January 5, 2003, or earlier. Thank you for your help, and should you have any questions, feel free to contact me.

MLS:csy
Enclosures